II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 2 February 2000
on the aid scheme implemented by Italy for cooperatives in Sicily

(notified under document number C(2000) 384)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/359/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1], and in particular Article 14 thereof,

Having called on interested parties to submit their comments pursuant to the first subparagraph of Article 88(2) of the EC Treaty [2], and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 25 October 1993 the Italian authorities belatedly notified the Commission under Article 88(3) of the Treaty, of a law enacted by the Region of Sicily, Law No 25 of 1 September 1993 on measures to promote employment; as the Law had already been passed at that time, the Commission entered it on the register of unnotified aid under NN 113/93. The Law introduces new aid schemes and amends dozens of existing ones; it comprises 165 Articles. After an initial examination, the Commission found it necessary to divide the case into three parts:

— Articles 44 and 50 and Chapter VII (Articles 77 to 105) of Regional Law No 25/1993: measures to promote agriculture and forestry (aid measure NN 113/B/93,

— Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995: measures to promote cooperatives (aid measure NN 79/96),

— the remainder of Regional Law No 25/1993 (aid measure NN 113/A/93).

(2) This Decision relates solely to the aid schemes set up under Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, and the cases in which it is applied.

(3) On 25 March 1998 the Commission decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid scheme set up under Article 55 of Sicilian Regional Law No 25/1993, as amended by Article 5 of Law No 6 of 10 January 1995, and in respect of the aid scheme provided for under Article 36 of Sicilian Regional Law No 23 of 9 May 1986, as amended by Article 55 of Law No 25/1993.

(4) By fax of 25 March 1998 (SG(98) D/32049) [3], the Commission mistakenly informed the Italian authorities that it did not raise any objections.

(5) By letter dated 2 July 1998 (SG(98) D/5241), the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid scheme set up under Article

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 382, 9.12.1998, p. 11.

[3] The text of the fax sent by the Commission to the Italian authorities is as follows: 'Please find below a list of the decisions taken by the Commission on 25 March 1998: NN79/96 Measures to promote cooperatives — Sicily: decision not to raise any objections'.

55 of Sicilian Regional Law No 25/1993, as amended by Article 5 of Law No 6/1995, and in respect of the aid scheme provided for under Article 36 of Sicilian Regional Law No 23/1986, as amended by Article 55 of Law No 25/1993; it also formally required Italy to provide it, within one month of receiving the letter, with all documentation, information and data which could serve to enable it to assess the compatibility with Article 87 of the Treaty of the aid granted under the abovementioned schemes.

(6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ([4]).

(7) The Commission invited other Member States and interested parties to submit their observations on the measures at issue within one month of the date of publication of that decision in the *Official Journal of the European Communities*.

(8) The Italian authorities submitted their comments by letter dated 26 March 1999. The Commission did not receive other comments from interested parties. The Italian authorities did not respond to the Commission's formal requirement to provide information, but instead stated that most of the observations made in the Commission's letter initiating the procedure related to the scheme provided for under Article 36 of Regional Law No 23/1986, which had already been approved by the Commission, and that the scheme set up under Article 55 of Regional Law No 25/1993 had never been applied.

(9) In view of the incorrect message transmitted on 25 March 1998, the Italian authorities were requested by letter dated 1 July 1999 to confirm that Article 55 of Regional Law No 25/1993 had not so far been applied and to undertake to repeal it; they were furthermore informed that, should they fail to reply within 15 working days of the date of the letter, the Commission was entitled to adopt a final decision on the basis of the information in its possession.

(10) By letter dated 21 January 2000, registered on 26 January 2000, the Italian authorities stated that the scheme set up under Article 55 of Regional Law No 25/1993 had never been applied.

II. **DESCRIPTION**

(11) Article 55 of Regional Law No 25/1993 inserts a paragraph into Article 36 of Regional Law No 23/1986, which sets up an aid scheme for cooperatives. According to the Italian authorities, that Law was notified to the Commission, and the Commission approved it, as was allegedly shown by telex No 6891 of 25 October 1986, in which the Italian Permanent Representative's Office informed the Sicilian authorities that the Commission had no particular observations to make on the scheme.

([4]) See footnote 2.

(12) Article 36 of Regional Law No 23/1986 provides for aid to cooperatives in the form of soft loans granted by the IRCAC (*Istituto regionale di credito alle cooperative*), a regional agency providing credit to cooperatives, at a rate of 4 %. Such loans must be for a period of no more than 20 years, may not exceed ITL 5 billion and are to finance projects with the following aims:

(a) to boost productivity and employment by expanding the means of production and/or modernising the means of production and/or technical services through innovations and improvements;

(b) to increase returns on products, in particular by improving quality;

(c) to rationalise the system of distribution;

(d) to replace no more than 50 % of liabilities contracted in order to carry out the above projects;

(e) to restructure or convert production plant.

Where the cooperatives have among their members workers who were laid off under the *cassa integrazione* income guarantee scheme and/or dismissed, the loans may be granted under the above conditions to finance projects:

(f) to build and acquire plant for production, distribution, tourism or services;

(g) to update or expand the projects referred to in points (a) to (e) above.

(13) Article 55 of Regional Law No 25/1993 authorises the Sicilian Regional Government to give an additional guarantee to the IRCAC so as to enable it to grant loans to finance the acquisition of business assets by cooperatives where the asset itself does not provide sufficient security.

(14) Combination with aid under other schemes cannot be ruled out, as the Law does not expressly prohibit it.

III. **COMMENTS FROM INTERESTED PARTIES**

(15) No comments were received from interested parties concerning the aid scheme in question in the course of the procedure laid down in Article 88(3) of the Treaty.

IV. **COMMENTS FROM ITALY**

(16) In their letter of 26 March 1999, the Italian authorities deplored the delay and the inexplicable difference in substance between the letter of 25 March 1998, which did not raise any objections to the two aid schemes referred to in Article 55 of Regional Law No 25/1993 and Article 36 of Regional Law No 23/1986, and the letter of 2 July 1998 informing them that the Commission had decided to initiate the procedure laid down in Article 88(3) of the Treaty in respect of the two aid schemes in question.

(17) The Italian authorities also stated that most of the observations made by the Commission in its letter initiating the procedure related to the scheme provided for under Regional Law No 23/1986, which they claimed had been approved by the Commission, as was shown by telex No 6891 of 25 October 1986, in which the Italian Permanent Representative's Office informed the Sicilian authorities that the Commission had no particular observations to make on the scheme.

(18) The Italian authorities fiuther indicated that, as of 26 March 1999, Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, had not been applied.

(19) Lastly, by letter dated 21 January 2000, the Italian authorities confirmed that the scheme set up under Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, had never been applied.

V. ASSESSMENT OF THE AID

Classification of the measures provided for under Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, as aid

(20) In the light of the information supplied by the Italian authorities and the results of investigations conducted in the course of the procedure, the Commission notes that the aid scheme provided for under Article 36 of Regional Law No 23/1986 was approved on 8 October 1986. The scheme therefore constitutes existing aid within the meaning of Article 88(1) of the Treaty, without prejudice to compliance with the appropriate measures accepted by Italy in the context of regional aid.

(21) Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, introduces a new scheme which does not modify the initial soft-loans scheme set up under Article 36 of Regional Law No 23/1986. A soft loan may be granted in pursuance of Article 36 of Regional Law No 23/1986 with or without the guarantees provided for under Article 55 of Regional Law No 25/1993. The two schemes are therefore separate. This assessment of the aid involved in the measures in question relates solely to the guarantee scheme provided for under Article 55 of Regional Law No 25/1993.

(22) The guarantee scheme provided for under Article 55 of Regional Law No 25/1993 should have been notified to the Commission at the draft stage, as required by Article 88(3) of the Treaty. The Italian authorities failed to do this and, since they notified the scheme only after the Regional Law was adopted, the aid is illegal under Community law as the requirements of Article 88(3) of the Treaty have not been complied with.

(23) The guarantees covering loans granted to cooperatives by the IRCAC constitute State aid within the meaning of Article 87(1) of the Treaty since they enable those cooperatives to obtain loans on terms more advantageous than those normally available on the financial markets. Thanks to the public guarantee, the cooperatives are able to obtain lower interest rates and/or offer a smaller security. It is likely, furthermore, that without the public guarantee some cooperatives would not be able to obtain a loan on any terms. The guarantee can therefore enable cooperatives to stay in business or even eliminate competitors who do not enjoy similar advantages, or to remain in business instead of being eliminated or restructured. The guarantee confers an advantage on enterprises operating in certain areas of Italy.

(24) The public guarantee distorts competition because it increases the opportunities open to the recipient businesses in comparison with competitors who do not enjoy the same advantages. If the same effect also occurs in transactions between Member States, then the aid affects intra-Community trade.

(25) More specifically, the aid provided for by way of the guarantee scheme set up under Article 55 of Regional Law No 25/1993 distorts competition and affects intra-Community trade in cases where the recipient businesses export part of their production to other Member States; similarly, where those businesses do not export, their domestic production is favoured in so far as businesses based in other Member States have less chance of exporting their products to the Italian market [5].

(26) The guarantee therefore constitutes state aid within the meaning of Article 87(1) of the Treaty which distorts competition and is liable to affect trade between Member States.

Compatibility of the measures provided for by Article 55 of Regional Law No 25/1993

(27) Having established that the measures provided for under Article 55 of Regional Law No 25/1993 constitute State aid within the meaning of Article 87(1) of the Treaty, the Commission has to examine whether they may be declared compatible with the common market in pursuance of Article 87(2) or (3) of the Treaty.

(28) As regards the applicability of the exemptions provided for by the Treaty, the Commission finds that, since the aid is not of a social character (Article 87(2)(a)), nor is it intended to make good damage caused by natural disasters or exceptional occurrences (Article 87(2)(b)), nor does it fall within the scope of Article 87(2)(c), it does not qualify for any of the exemptions laid down in Article 87(2).

[5] Judgment of the Court of Justice of the European Communities of 13 July 1988 in Case 102/87 *France* v *Commission* [1988] ECR 4067.

(29) The aid scheme provided for under Article 55 of Regional Law No 25/1993 enables cooperatives to carry on their activities, reducing the costs they incur in making certain investments. The aid element involved in the guarantee corresponds to the difference between the interest rate which the borrower would have to pay on the free market and the rate actually obtained thanks to the guarantee, net of any premium paid for the guarantee. Where, in view of its financial situation, a cooperative could not have obtained a loan without the state guarantee, the amount of the aid involved corresponds to the full amount of the loan.

(30) If the guarantee were to relate to loans granted in order to finance projects of the types listed in recital 12(b), (c), (d) or (e) of this Decision, it would not have the effect of stimulating initial investment within the meaning of the rules on regional aid but rather that of reducing the current expenses incurred by businesses in contracting loans, which are furthermore already subsidised, with a view to carrying out operations that do not have the status of initial investments: in such cases, the aid can be classed as operating aid.

(31) Operating aid, whose distorting effects are especially strong, can be considered compatible with the common market only by way of exception and only in the most disadvantaged regions. Even then it is subject to a number of restrictions, such as that of being limited in time. Those restrictions have gradually been tightened, and the new guidelines on national regional aid [6] stipulate that operating aid is normally prohibited but may exceptionally be allowed on condition that it is limited in time and progressively reduced.

(32) Since the Commission does not have any information enabling it to establish that the above conditions for the application of the exemption provided for by the Treaty are met, it concludes that they are indeed not fulfilled.

(33) If the guarantee relates to loans granted in order to finance projects of the type referred to in recital 12(a) of this Decision, it can constitute aid conditional on carrying out an initial investment. However, since the Commission does not have information enabling it to calculate the aid intensity and to establish whether the rules on the combination of aid and sensitive sectors are complied with, it takes the view that the conditions for the application of the regional exemption provided for under the Treaty are not fulfilled. The aid scheme is presented as having the effect of increasing employment, but the Commission notes that in the case in point the jobs are exclusively linked to the implementation of an investment. The aid must therefore be examined as regional aid, and the Community guidelines on aid to employment do not apply.

(34) If the guarantee relates to loans granted in order to finance projects of the type referred to in recital 12(g) of this Decision, it can be classed as aid conditional on carrying out an initial investment. However, since the Commission does not have information enabling it to calculate the aid intensity and to check whether the rules on the combination of aid and sensitive sectors are complied with, it considers that the conditions for the application of the regional exemption provided for by the Treaty are not fulfilled.

(35) If the State guarantee is necessary to cooperatives in order to obtain loans for financing the operations described in recital 12 of this Decision, the aid granted to them constitutes aid to firms in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty [7] where the projects concerned are essential in order to enable the recipient firms to remain in business. The aid must therefore be examined also in the light of those guidelines.

(36) As the Commission does not have any information enabling it to establish that the rules laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty are complied with, it concludes that the conditions for the application of the sectoral exemption provided for by the Treaty are not met.

(37) In view of the foregoing, the aid provided for under Article 55 of Regional Law No 25/1993 does not qualify for the exemptions provided for under Article 87(3)(a) or (c) of the Treaty or, for obvious reasons, those provided for under Article 87(3)(b) or (d). It consequently remains subject to the prohibition laid down in Article 87(1) of the Treaty.

VI. **CONCLUSIONS**

(38) The Commission finds that Italy adopted the aid scheme under examination unlawfully, in breach of Article 88(3) of the Treaty.

(39) In the light of the analysis set out in Part V of this Decision, the Commission finds that aid granted under Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, is incompatible with the common market.

[6] OJ C 74, 10.3.1998, p. 9.

[7] OJ C 368, 23.12.1994, p. 12 and OJ C 288, 9.10.1999, p. 2.

(40) Where aid granted unlawfully is found to be incompatible with the common market, the Commission, acting in accordance with Article 14 of Regulation (EC) No 659/1999, requires the Member State concerned to recover it from the recipients in order to re-establish the previously existing situation. In the present case, although the Italian authorities have asserted that Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, has never been applied, any aid possibly granted under the scheme must be recovered.

(41) Repayment is to be made in accordance with the procedures of national law. The amounts to be repaid are to bear interest from the date on which the aid was made available to the recipients until the date on which it is effectively repaid. The interest must be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

(42) In view of the legitimate expectations created by the letter mistakenly transmitted to the Italian authorities on 25 March 1998, the recovery should not concern any aid granted between that date and 2 July 1998, when the decision to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the scheme concerned was notified to the Italian authorities,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme provided for by Article 55 of Regional Law No 25/1993, as amended by Article 5 of Regional Law No 6/1995, and unlawfully adopted by Italy is incompatible with the common market.

Article 2

Italy shall abolish the aid scheme referred to in Article 1.

Article 3

Italy shall take whatever steps are necessary to recover from the recipients any aid referred to in Article 1 which has been unlawfully awarded, in particular any aid granted before 25 March 1998 or after 2 July 1998.

Repayment shall be made in accordance with the procedures of national law. The amounts to be repaid shall bear interest from the date on which the aid was made available to the recipients until the date on which it is effectively repaid. The interest shall be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

Article 4

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 2 February 2000.

For the Commission

Mario MONTI

Member of the Commission